

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC JOHNSON,

No. C 12-6393 WHA (PR)

Petitioner,

**ORDER DENYING MOTION FOR
RECONSIDERATION**

v.

DIRECTOR,

(Docket No. 12)

Respondent.

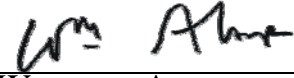
Petitioner, a California prisoner proceeding pro se, filed this habeas case under 28 U.S.C. 2254. Respondent's motion to dismiss the petition as untimely was granted. Petitioner has filed a motion for reconsideration. He cites the fact that he had on two prior occasions filed habeas petitions in the federal court, one in 2007 and the other in 2011. Those petitions were dismissed without prejudice because petitioner had not exhausted his claims. It was explained in the dismissal order that federal habeas petitions do not toll the limitations period. *See Duncan v. Walker*, 533 U.S. 167, 180-81 (2001). Petitioner characterizes the instant petition as an "amended" petition, and he argues that there is no statute of limitations for amended petitions. The petition filed herein was not labeled as an amended petition, it did not include the case number of any of his prior cases so as to indicate that he intended it to be an amended petition in one of his earlier cases. Moreover, petitioner was not given leave to file an amended petition in his prior two cases because the petitions were not mixed petitions, but rather were completely unexhausted. In any event, when he filed the instant petition, any time for filing an

1 amended petition in his prior cases would have long since expired.

2 Petitioner's motion for reconsideration (dkt. 12) is therefore **DENIED**.

3 **IT IS SO ORDERED.**

4 Dated: October 3, 2013.


5 WILLIAM ALSUP
6 UNITED STATES DISTRICT JUDGE4